

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Clarksburg Division**

HARRY GINGOLD,

Plaintiff,

v.

**Civil Action No.: 1-23-cv-91
Judge Thomas S. Kleeh**

**WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS, E. GORDON GEE,
MARYANNE REED, GREGORY DUNAWAY,
and EARL SCIME,**

Defendants.

DEFENDANTS' MOTION TO DISMISS

Defendants West Virginia University Board of Governors (the “WVUBOG”), Gordon Gee, Maryanne Reed, Gregory Dunaway, and Earl Scime (collectively, “Defendants”), by counsel, move to the dismiss Plaintiff’s Amended Complaint (Doc. No. 8) for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff Harry Gingold brings this action, asserting the following claims against Defendants: (1) age discrimination in violation of the ADEA; (2) retaliation in violation of the ADEA, Title VI, and/or Title VII of the Civil Rights Act; (3) violations of due process under 42 U.S.C. § 1983; (4) breach of contract and/or breach of implied covenant of good faith and fair dealing; and (5) hostile work environment. Plaintiff’s Amended Complaint fails as a matter of law as a result of sovereign immunity, qualified immunity, failure to exhaust administrative remedies, and failure to state a claim upon which relief may be granted under the various constitutional, statutory, and common law causes of action that Plaintiffs asserts. Defendants reference and fully incorporate

their supporting memorandum of law into this motion and respectfully request that the Court grant this Motion and dismiss Plaintiff's Amended Complaint in its entirety with prejudice.

Respectfully submitted,

**WEST VIRGINIA UNIVERSITY BOARD OF
GOVERNORS, E. GORDON GEE,
MARYANNE REED, GREGORY DUNAWAY,
and EARL SCIME,**

By Counsel,

/s/ Wendy G. Adkins

Wendy G. Adkins (WVSB # 9412)

Jackson Kelly PLLC

3000 Swiss Pine Way, Suite 200

Morgantown, West Virginia 26501

Telephone: 304-284-4136

Facsimile: 304-284-4142

wgadkins@jacksonkelly.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Clarksburg Division**

HARRY GINGOLD,

Plaintiff,

v.

**Civil Action No.: 1-23-cv-91
Judge Thomas S. Kleeh**

**WEST VIRGINIA UNIVERSITY
BOARD OF GOVERNORS, E. GORDON GEE,
MARYANNE REED, GREGORY DUNAWAY,
and EARL SCIME,**

Defendants.

CERTIFICATE OF SERVICE

I, Wendy G. Adkins, counsel for Defendants, hereby certify that the foregoing **“DEFENDANTS’ MOTION TO DISMISS”** was electronically filed with the Clerk of the Court using the CM/ECF system, on this 20th day of December 2023, and served upon the following by U.S. Mail postage paid:

Harry Gingold (pro se)
264 Lakeside Drive
Morgantown, West Virginia 26508

/s/ Wendy G. Adkins
Wendy G. Adkins, Esquire (WVSB # 9412)